Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMPETITIVE UNIVERSAL SERVICE COALITION REPLY COMMENTS ON THE RURAL TASK FORCE RECOMMENDATION

The Competitive Universal Service Coalition ("CUSC"), 1/ by counsel and in response to the Public Notice in the above-captioned proceeding hereby submits this Reply in response to the comments filed on the *Rural Task Force Recommendation*. 2/

CUSC applauds the efforts of the Rural Task Force ("RTF") in bringing together varied and competing interests and forging a solid compromise proposal. CUSC is eager to build on the RTF's efforts to assist the Joint Board and the FCC in crafting rules to address the universal service support needs of the rural, insular

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1/ The Competitive Universal Service Coalition includes the following companies and associations: Association for Local Telecommunications Services; AT&T Wireless Services; Competitive Telecommunications Association; Nucentrix Broadband Networks, Inc.; Personal Communications Industry Association; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; Western Wireless Corporation; and the Wireless Communications Association.

2/ *Federal-State Joint Board on Universal Service Seeks Comment on Rural Task Force Recommendation; Pleading Cycle Established*, CC Docket No. 96-45, Public Notice, FCC-00J-3 (rel. Oct. 4, 2000), seeking comment on *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, rel. Sept. 29, 2000 ("RTF Recommendation").

and high-cost communities currently served by rural telephone companies. CUSC also recognizes that universal service funding policies for rural telephone companies may be different from those for non-rural companies, at least in the short-term. Nonetheless, CUSC strongly believes that universal service entry and funding policies, including the designation of competitive Eligible Telecommunications Carriers ("ETCs"), must not unfairly disadvantage competitive carriers seeking to enter areas served by rural telephone companies. Therefore, it is critical that the FCC and the Joint Board act to enable competitive ETCs to offer new universal service options to consumers in rural areas.

In these reply comments, we explain why: (1) competitive neutrality and funding portability must continue to be guiding principles for universal service reform; (2) the Joint Board and the FCC should reject certain parties' arguments to implement the RTF proposal in ways that might create new impediments to competitive entry; and (3) the RTF's recommendations regarding the size and growth of high-cost universal service funding levels should constitute a ceiling or maximum level, and rural incumbent local exchange carrier ("ILEC") arguments for unlimited increases in funding levels must be rejected. CUSC generally supports the RTF's recommendations and believes they should be adopted as a package. Nonetheless, given that most of the rural ILECs argued for substantial changes to the package, CUSC respectfully submits a few minor modifications that its members would support.

I. COMPETITIVE NEUTRALITY AND FUNDING PORTABILITY MUST CONTINUE TO GUIDE RURAL UNIVERSAL SERVICE POLICY

When Congress enacted the Telecommunications Act of 1996, one of its chief goals was to introduce competition in the provision of local telephone service to consumers in all parts of the country. When consumers have choice, Congress reasoned, prices will decline and new, innovative services will develop more rapidly. With Congress' mandate in mind, the Joint Board and the Commission have adopted competitive neutrality and funding portability as fundamental principles guiding the new universal service paradigm. 3/ It is beyond debate that these principles of competitive neutrality and funding portability must be retained, and the RTF correctly recognized that its recommendations had to be consistent with these overarching goals. 4/

The Joint Board and the Commission must therefore reject NTCA's and the Western Alliance's misguided arguments for abandoning the fundamental goal of funding portability. 5/ Without portable funding, local competition will never develop in areas currently served by rural telephone companies. Indeed, the non-portable universal service system in effect prior to the enactment of the 1996

3/ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (Joint Board 1996) ("*First Recommended Decision*"); *Federal-State Joint Board on Universal Service*, Report & Order, 12 FCC Rcd 8776 (1997) ("*First Report & Order*").

4/ RTF Recommendation at 7, 14-15, 33, 37; *Mission Statement, Objectives and Principles for Developing a Recommendation*, Rural Task Force Principles for Developing Recommendations (Dec. 12, 1998) at www.wutc.wa.gov/rtf.

5/ National Telephone Cooperative Ass'n ("NTCA") at 10-11; Western Alliance at 13.

Act was a barrier to entry. The 1996 Act was intended to eliminate such competitive restraints, as the Commission has recognized. 6/

As discussed below, the Joint Board and the Commission should: (1) structure study area disaggregation in a manner that provides sufficient regulatory oversight to preclude anti-competitive behavior; (2) adopt reforms to the administration of high-cost funding to improve its competitive neutrality; and (3) reject policy proposals that might create impediments to competitive entry.

A. Regulatory Oversight is Needed to Ensure that Study Area Disaggregation and Targeting of Support Are Structured Pro-Competitively

CUSC generally supports disaggregation of rural telephone companies' study areas to target funding more accurately to higher cost areas. As the RTF correctly recognizes, accurate targeting of high-cost support benefits competitive entrants, incumbents, and consumers. 7/ As the Commission has recognized, a necessary corollary of facilitating disaggregation of rural telephone company study areas for funding purposes is to disaggregate those study areas for ETC designation and service area purposes, pursuant to the definition of "service areas" for ETCs in

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6/ *See First Report & Order*, 12 FCC Rcd at 8776, ¶ 601. *See also Western Wireless Petition for Preemption of Statutes and Rules Regarding the Kansas Universal Service Fund*, Memorandum Opinion & Order, File No. CWD 98-90 (rel. Aug. 28, 2000) ("Kansas USF Portability Ruling").

7/ RTF Recommendation at 33-34.

Section 214(e)(5) of the Act. 8/ If study areas are not disaggregated for ETC designation and service area purposes, then all ETCs in those areas, including both ILECs and their competitors, would be obligated to serve customers in all parts of the study area, and disaggregation and targeting of support would be pointless. 9/

CUSC strongly supports disaggregating and accurately targeting support, for both funding and ETC purposes, because those measures eliminate artificial barriers to competitive entry in the highest-cost areas and avoid creating artificial entry incentives in relatively low-cost portions of rural telephone companies' study areas. Such measures also ensure that competitors that serve a relatively high-cost portion of a study area receive a level of funding that appropriately reflects the cost of serving a specific geographic area, rather than an unreasonably low amount of funding based on the average cost of the incumbent's entire study area. Targeting also makes it possible to reduce the overall amount of funding, because it reduces the amount of funding to relatively low-cost portions of a study area. A lower overall amount of funding safeguards the interests of consumers across the country, who ultimately pay for such support.

8/ *First Report & Order*, 12 FCC Rcd at ¶¶ 25, 129; 47 U.S.C. § 214(e)(5). *See* RTF Recommendation at 34 note 62 (citing that statutory provision).

9/ *See, e.g., Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion & Order, 15 FCC Rcd 9921 (Com. Car. Bur. 1999); *Wyoming Public Service Commission Files for Waiver of the Non-Rural High-Cost Universal Service Support Targeting Requirements Included in Sections 54.309 and 54.311 of the Commission's Rules*, Public Notice, CC Docket No. 96-45, DA 00-1019 (rel. May 8, 2000).

On the other hand, if incumbents are allowed to engage in gamesmanship with the disaggregation process, inaccurate targeting has the potential to be profoundly anti-competitive. In particular, if an incumbent could control how funding is distributed within a study area, absent sufficient regulatory oversight, then in cases where a competitive ETC is able to serve only certain portions of the study area, the incumbent could direct an excessive amount of funding to the areas where the competitor is unable to provide service.

CUSC is concerned about the risk that ILECs could game the process to direct excessive support to areas not served by competitors, and inadequate support to areas where competitive entry is occurring. This concern is *not* simply motivated by an interest by competitive entrants to be able to "cherry pick" universal service support for low-cost portions of rural telephone company study areas. 10/ Inaccurate and unreasonable methodologies for targeting support could disadvantage carriers – and consumers – in the highest-cost areas as well, as the following example illustrates. Consider a hypothetical rural ILEC with a study area that includes two wire centers, which we can call "Mountains" and "Plains," where the need for high-cost support, based on the relative cost of service, is twice

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10/ Some ILECs misleadingly imply that disaggregation and targeting would protect consumers in relatively high-cost portions of a study area from "cherry picking" by competitive ETCs that attempt to serve only the lower cost portions of a study area. *See, e.g.*, Western Alliance at 13. Of course, disaggregation and targeting are not needed to prevent "cherry picking;" all ETCs have a statutory obligation to serve all customers in their designated "service areas." 47 U.S.C. § 214(e)(1). Nonetheless, CUSC believes that disaggregation of study areas and targeting of support are in the public interest, for the reasons described in the text.

as high in "Mountains" as in "Plains." Instead of providing an averaged $15 per line of high-cost support throughout the study area, it would be more accurate to provide $20 per line in "Mountains" and $10 per line in "Plains." Now consider a wireless carrier that seeks to provide service as a competitive ETC in "Mountains," where it has CMRS licenses, but not in "Plains," where it does not have licenses. The ILEC could successfully thwart competitive entry by refusing to disaggregate and target support at all, or by inaccurately targeting support so that, for example, only $17 per line is available in "Mountains" and $13 per line is provided in "Plains." The result would be an anti-competitive form of cross-subsidization, in violation of Sections 254(e) and (k) of the Act.

Thus, it is critically important to control the process of disaggregation and targeting to ensure that it is cost-based and competitively neutral. CUSC has no objection to the general principles for disaggregation set forth in the RTF Recommendation, 11/ or to the so-called "Path 2," in which state commissions would review, analyze, and approve disaggregation plans under their standard procedures. 12/ However, CUSC has reservations about "Path 1," in which a rural ILEC could exercise the option *not* to target high-cost support. 13/ Such a decision

11/ RTF Recommendation at 34.

12/ *Id.* at 35. Significantly, though, this would be another area where authority over implementation of the *federal* universal service program would be delegated to the *state* regulators. States would have to be required to discharge this delegated authority consistent with pro-competitive federal standards.

13/ *Id.*

should be made by regulators, not incumbent carriers. Indeed, in some cases, a prospective entrant may want to propose disaggregation and targeting, and a state commission should be free to adopt such a proposal, consistent with Sections 214(e)(5) and 254, even over the objection of an ILEC.

More significantly, CUSC is concerned that "Path 3," in which a rural ILEC would "self-certify" a method for geographic disaggregation and the plan would take effect immediately, 14/ contains the potential for significant mischief unless adequate controls are in place. To be sure, self-certification in many contexts can reduce the delays and administrative costs stemming from unnecessary regulatory procedures, 15/ and CUSC would not rule it out altogether in the area of disaggregation zone plans. For such a scheme to work, however, sufficient controls must be in place to prevent anti-competitive gamesmanship by incumbent carriers. 16/ In particular, CUSC strongly urges the Commission to include the following provisions in its rules in order to preclude anti-competitive manipulation of disaggregation plans:

14/ *Id.* at 36.

15/ In particular, CUSC would strongly support a self-certification process for the designation of ETCs.

16/ CUSC particularly objects to draft rule 54.308(k) submitted by the Rural Leadership Coalition. Rural Leadership Coalition *Ex Parte* Filing, CC Docket No. 96-45, filed Nov. 10, 2000, at 8-9. That draft rule does no more than restate the general language in the RTF Recommendation without providing adequate specificity for the structure of a self-certified disaggregation plan.

- For self-certified plans, support must be disaggregated based on geographic zones no smaller than wire centers, except in cases where a state commission has made a prior determination that a different level of disaggregation is appropriate. Carriers seeking to disaggregate support below the wire center level must submit their disaggregation plans for approval by the state commission.

- The ratio of the high-cost support (HCL, LSS, LTS) in each of the zones must be consistent with the ratio of the difference between the cost of service in each of the zones (see the following bulletpoint) and an appropriate national cost benchmark (such as $27, which is 135% of the national average cost of $20 per line, which the FCC adopted for non-rural high-cost support). 17/

- For purposes of demonstrating the cost ratios described in the preceding bullet point, the proponent need not submit a cost study. However, it must submit detailed work papers demonstrating the cost levels in each of the zones either based on publicly available data on embedded cost (*e.g.*, ARMIS) or based on data from one of the generally-accepted forward-looking economic cost models.

CUSC disagrees with the commenters who argue that rural ILECs should be able, with little or no regulatory oversight, to establish three or more geographic zones *below* the wire center level, 18/ and respectfully disagrees with the RTF's recommendation to allow rural ILECs to establish up to two zones below the wire center level with no regulatory oversight. Without regulatory oversight, there

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17/ *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20470, ¶ 68 (1999) ("*Ninth Report & Order*"). The source of the $20 average forward-looking cost figure is the "cost benchmark" tab, cell C-105, on the "*Wirecenter Workbook*" spreadsheet, available at http://www.fcc.gov/Bureaus/Common_Carrier/Public_Notices/1999/d991165b.xls. *See Common Carrier Bureau Releases Revised Spreadsheet For Estimating Universal Service Support Using Proposed Input Values In The Forward-Looking Cost Model*, CC Docket Nos. 96-45, 97-160, DA 99-1322 (released July 2, 1999).

18/ *See, e.g.*, NTCA at 15-17; Nebraska Rural Independent Cos. at 4-6; South Dakota Independent Telephone Coalition ("SDITA") at 6-8; TDS Telecomm. Corp. at 6; Western Alliance at 13-14.

would be no restrictions on the ILECs' ability to establish multiple sub-wire center funding zones with indeterminate boundaries about which no competitive carrier could obtain complete information, let alone compete against. 19/ As discussed above, ILECs also could target support in an anti-competitive manner, retaining funding in excess of that justified by cost differences to sub-wire center zones where little or no competition is expected, and sending inadequate amounts of funding to sub-wire center zones where competitors may be present.

In sum, while disaggregation and targeting of support below the study area level is in the public interest, the Joint Board and the Commission must ensure that it is implemented in a pro-competitive manner. To achieve this goal, sufficient regulatory oversight over these plans must be in place – or, for self-certification to work, the rules governing it must be adequately detailed and yield results that are publicly verifiable, so as to preclude anti-competitive manipulation. The Commission must not delegate its authority over the structure of the funding program to the incumbent carriers who have the most to gain from anti-competitively abusing that structure. 20/

19/ *Cf.* RTF Recommendation at 37-38 (need for greater transparency); *see infra* § I.B.2. It is already virtually impossible for competitors to obtain information about non-rural ILECs' "UNE Zone" boundaries used for distributing Interstate Access-Related Support pursuant to the CALLS plan. CUSC understands that USAC is in the process of remedying this problem.

20/ By way of comparison, when the Commission adopted "density pricing zones" for implementing geographically deaveraged access rates, it required ILECs to obtain the FCC's approval of their zone plans prior to filing tariffs implementing deaveraged pricing. *Expanded Interconnection With Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7455,

B. The Commission Should Expeditiously Adopt RTF Recommendations to Administer the High-Cost Fund in a More Competitively Neutral Manner

1. The Funding Lag for Competitive ETCs Must be Eliminated

CUSC strongly agrees with NECA and the RTF that the Commission should take steps to make "the time lag between provision of service and receipt of support . . . . as short as technically and administratively feasible." 21/ The delay in disbursement of universal service funding to competitive ETCs is among the most significant barriers to competitors seeking to participate in the universal service program. This is particularly true given the uncertainty surrounding the timing of a new entrant ETC's initial data submission and receipt of funding upon being designated. The Commission must take steps to remedy this situation.

The original universal service rules adopted in 1997 contained a "quirk" (probably created inadvertently by the drafters of the rules) whereby funding was provided immediately to ILECs but delayed to competitive ETCs by as long as two years, and ILECs could update their data quarterly but competitive ETCs could do so only once a year. 22/ More recently, the Commission attempted to

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¶ 180 (1992), *rev'd on other grounds sub nom. Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994).

21/ National Exchange Carrier Ass'n ("NECA") at 8; RTF Recommendation at 38.

22/ In the *First Report & Order*, the Commission specifically decided to make high cost support "portable, or transferable, to competing eligible telecommunications carriers when they win customers from ILECs or service previously unserved customers." 12 FCC Rcd at ¶ 273. However, the Commission's resultant implementing rules used inconsistent methodologies regarding the reporting of the number of lines for ILECs (47 C.F.R. §§ 36.611 &

remedy this anti-competitive rule provision, 23/ but it is still not clear whether the remedy applies to funding in rural telephone company areas as well as funding in non-rural areas. Moreover, it is unclear from the rules when a newly designated ETC may make its first submission of data and begin receiving support – *i.e.*, may a new entrant ETC submit data (and begin receiving support) immediately upon designation, or must the carrier wait for the next mandatory filing deadline provided in the rules (which, in the case of ETCs serving rural telephone company service areas, presently comes around on only an annual basis July 31 of each year 24/)?

The Commission must make it clear that, even if rural ILECs are required to report their line counts only once a year and have an option to do so more frequently, competitive ETCs have the option to make both their initial line count report and subsequent reports at least quarterly. The Commission should also specify that new entrant ETCs may make their first report immediately after being designated and need not wait until the next annual filing deadline. The Commission should do this either explicitly through new rules or an amendment to Section 54.307, or it should specifically clarify that such reports are already permitted under Section 54.307(c) as it currently stands.

36.612) and competitive ETCs (47 C.F.R. § 54.307). *See also* Western Wireless Petition for Clarification or Rulemaking, CC Docket No. 96-45 (filed Oct. 15, 1998).

23/ *Ninth Report & Order,* 14 FCC Rcd at 20478, 20480, ¶¶ 87, 92; *Federal-State Joint Board on Universal Service*, Twentieth Order on Reconsideration, CC Docket No. 96-45, FCC 00-126, ¶¶ 17-18 (rel. Apr. 7, 2000).

24/ *See* 47 C.F.R. § 54.307(c).

In any case, even as remedied, there is still a minimum six to nine month lag between the time that service is provided and the date that funding is received. This lag, like the lag affecting carriers' contributions identified by AT&T, 25/ is an unnecessary administrative glitch that could impede competition. Thus, CUSC strongly supports the RTF's recommendation to shorten the interval between the provision of service and receipt of universal service funding by using data based on the average line count for each calendar quarter (*i.e.*, beginning of quarter plus end of quarter divided by two) data, which is likely to be available within a month after the end of the quarter. 26/ Eliminating the lag will ensure that all incumbent and competitive carriers are treated in a fair and non-discriminatory manner.

2. The Per-Line Funding Available in Each Geographic Location Must be Transparent to Facilitate Competitive Entrants' Business Planning

In a competitive environment, all carriers must know precisely what is required of them, what support will be available, and how that support will be distributed. In this regard, CUSC supports the RTF's conclusion that amounts of support available to an ETC must be transparent. Like the RTF, CUSC believes that the amount of universal service support for any particular area must be

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25/ AT&T at 4-5.

26/ RTF Recommendation at 38. In its order adopting the "CALLS" plan, the Commission adopted a methodology similar to the one CUSC proposes it adopt here. *Cf. Access Charge Reform*, Sixth Report & Order, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, FCC 00-193, at ¶¶ 207-210 (rel. May 31, 2000) ("*CALLS Order*").

"explicit, readily available and easily identifiable." 27/ Notably, no party opposes this proposal.

Information on the amount of per-line support must be publicly available, easily accessible and provided in an easy-to-read format. This will allow potential competitors to obtain and analyze that information and to develop pre-entry business plans armed with all of the facts. In addition, it will allow competitive entrants to maintain and modify their plans as necessary. When a carrier can accurately project its costs, its strategic business planning will proceed more smoothly, and the likelihood that its costs will be reduced increases. When the carrier's costs are lower, it is better able to pass along those savings to its customers. Transparent per-line funding information will benefit both carriers and consumers. Therefore, CUSC supports the RTF's conclusion on this important issue. 28/

3. The RTF's Recommendation to Fund Wireless ETCs Based on Their Customers' Residential or Business Locations Should Be Adopted

The RTF recommendation proposes allowing a wireless ETC to use its customer's residential or business location as the basis for determining the

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27/ *Competition and Universal Service*, Rural Task Force White Paper 5, p. 18 (rel. Sept. 2000) at http://www.wutc.wa.gov/rtf.

28/ RTF Recommendation at 37-38.

disaggregation zone in which the customer resides for purposes of universal service support implementation. 29/ CUSC wholeheartedly supports this recommendation.

The National Telephone Cooperative Association ("NTCA") provides no support for its argument that the wireless customer's address may not have a relationship to the situs of the service and the costs of providing that service. 30/ To the contrary, CUSC submits that a cursory review of any wireless carrier's Form 499 filing would demonstrate that people use their wireless phones predominantly for local calls in the same geographic area in which they live and work. Moreover, there is no practical alternative to the RTF proposal, other than denying support to customers of wireless carriers – a result the Commission has already rejected. 31/

Notably, Congress recently enacted a statute that takes precisely the same approach to wireless customer locations as the RTF recommendation. In the recently passed Mobile Telecommunications Sourcing Act ("Sourcing Act"), 32/ Congress determined that, for taxing purposes, all of a single customer's mobile telecommunications services are deemed to stem from the customer's residence or primary business location. Congress intended to simplify the manner in which

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29/ RTF Recommendation at 38.

30/ NTCA at 11-12.

31/ *See e.g., First Recommended Decision*, 12 FCC Rcd at 124, ¶ 170; First Report & Order, 12 FCC Rcd at ¶ 145; *Federal-State Joint Board on Universal Service*, Seventh Report & Order and Thirteenth Order on Reconsideration, 14 FCC Rcd 8078, 8113, ¶ 72 (1999) ("*Seventh Report & Order*").

32/ Mobile Telecommunications Sourcing Act, Pub. L. 106-252 (July 28, 2000) (to be codified at 4 U.S.C. §§ 116 - 126).

mobile telecommunications services are taxed by setting one specific address from which the tax could be assessed. 33/ This simple and intuitive system for determining wireless customer locations will have the same practical benefits in the universal service context.

C. The RTF's Recommendations Must Not Be Allowed to Create New Impediments to Competitive Entry

The RTF's recommendations, commendably, are designed to promote competitive neutrality. Nonetheless, some its proposals, particularly if implemented in the manner advocated by some parties, might inadvertently have the opposite effect. CUSC addresses a few issues raised by the RTF report that might make it more difficult for new entrants to achieve ETC status. As the Commission knows, ETC designation is the key that opens the door to competitive entry in high-cost and rural areas. 34/

1. States Must Not Be Allowed to Deny ETC Designation Based on the Change In Funding Methodology Triggered By Competitive Entry

CUSC does not disagree with the RTF recommendation that a change in the methodology for determining a rural ILEC's funding should be triggered by a

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33/ *See* S. Rep. No. 106-326, 106th Cong., 2d Sess. (2000).

34/ "A new entrant faces a substantial barrier to entry if the incumbent [LEC] is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas . . . . No competitor would ever reasonably be expected to enter a high-cost market without first knowing whether it is also eligible to receive such support." *Federal-State Joint Board on Universal Service; Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, FCC 00-248, ¶¶ 12-13 (rel. Aug. 10, 2000).

competitive ETC entry into the market (as evidenced by the competitive ETC submitting subscriber line data to USAC). 35/ If the Commission adopts this recommendation, however, it should also make it perfectly clear that the fact that a competitive ETC's entry triggers this methodology change is not a basis for denying a competitive entrant's petition for ETC designation. 36/

2. Policy on Sales of Rural Exchanges Must Not Harm Competitive ETCs

The Commission should make it clear that competitive carriers that have already been designated as ETCs, or that have already submitted requests for designation, should not be affected by the sale of telephone exchanges from one carrier to another. The RTF recommends changes to Section 54.305 that would, among other things, make it more likely that transferred exchanges would be treated as a separate study area. 37/ As discussed below, CUSC does not object to the adoption of the RTF's proposed "safety valve" funding mechanism. 38/ If the Commission adopts that recommendation, however, it must also clarify that exchange sales or transfers to smaller ILECs do not affect preexisting designations

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35/ RTF Recommendation at 25-26.

36/ *Compare* Bristol Bay Tel. Coop. at 3 (funding methodology change should be triggered based on competitive ETC achieving specified market share, rather than simply reporting lines to USAC) (nine other ILECs filed virtually identical comments) (hereinafter cited as "Bristol Bay *et al.*").

37/ RTF Recommendation at 29-30. *See also id.*, Appendix D (indicating that transferred exchanges acquired by an entity would be designated as a new study area).

38/ *See infra* section II.B.

of competitive ETCs, nor should they trigger a need for ETC applicants to make rural "public interest" showings under Section 214(e) of the Act for an existing ETC designation or for new applications to serve the transferred area. 39/ Thus, even if transferred exchanges are designated as new "rural telephone company" study areas for funding purposes pursuant to the RTF's proposed "safety valve" mechanism, they should not be treated as "rural" for ETC designation purposes. 40/ This would preclude the anomalous and anti-competitive result of an exchange sale forcing competitive ETCs (or carriers that have already applied for ETC status) to return to the designating commission for a public interest finding, or requiring such carriers to serve additional areas, *i.e.*, the balance of that rural telephone company's study area. This is also consistent with the pro-competitive policies underlying study area disaggregation.

3. To Ensure Competitive and Technological Neutrality, No New Advanced Service or Information Service Requirements Should Be Added to the ETC Criteria in Section 54.101

The Commission and the Joint Board must be guided by the RTF's recognition that "an ETC should not lose universal service support, or be denied

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39/ *See* 47 U.S.C. § 214(e)(2), (6) (requiring that "[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [relevant] commission shall find that the designation is in the public interest").

40/ Such new study areas clearly cannot be treated as "rural" under Section 153(37)(D) of the Act, which requires that the carrier must have been in existence at the time the 1996 Act was adopted. Conceivably, such a carrier could be treated as rural for funding purposes if it qualifies under Sections 153(37)(A), (B) or (C) of the Act.

ETC designation because it cannot provide access to advanced services, as currently defined, if it otherwise provides all of the supported services." 41/ Accordingly, there is no basis at this time for changes to Section 54.101, the Commission rule setting forth the criteria that ETC applicants must meet to receive ETC designation. 42/ While the objective of avoiding barriers to the provision of advanced services is commendable, neither the record developed by the RTF nor that supplied by commenting parties in the instant proceeding demonstrates any support for augmenting the list of supported services. 43/

Instead, to ensure competitive and technological neutrality, the Commission must retain the existing criteria as a "floor," not a "ceiling." Moreover, it must be sure that competitive entrants, who will no doubt utilize an array of varied technologies, receive identical funding amounts as their incumbent counterparts. The Commission should be extremely wary about taking any steps that might make it even more difficult for carriers to qualify as ETCs. Reducing the number of eligible universal service providers would diminish competition in rural and high-cost areas, which would restrict the options for consumers in those areas and force them to pay higher prices.

41/ RTF Recommendation at 22, n. 42.

42/ 47 C.F.R. § 54.101.

43/ Although the Regulatory Commission of Alaska indicated, in general terms, its support for universal service funding for advanced services, it did not indicate that the list of supported services should be expanded. *See* Comments of the Regulatory Comm'n of Alaska at 4.

While universal service policy should avoid impeding investment in advanced services, ultimately consumer demand, not regulatory fiat, must be the main impetus behind investment in technologically advanced services in rural areas. And in the meantime, the Commission should take care to avoid sending a mixed message about its established ETC designation criteria.

4. The Universal Service Fund Must Remain Competitively Neutral and Must Not Be Used to Subsidize Rural ILECs' "Stranded Costs"

The RTF properly recommends adhering to the current Commission policy that "[u]nder any circumstances . . ., ILECs and CETCs serving the same area would receive the same amount of support per loop." 44/ Some ILECs, however, also seek compensation from the high-cost fund for so-called "stranded investment." 45/ But the RTF did "not reach agreement on the 'stranded cost' issue." 46/ Assuming that a revenue flow from the high-cost fund for "stranded costs" would not be portable to competitive ETCs, it would not be competitively

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44/ RTF Recommendation at 27-29; *Accord* Comments of the California Public Utilities Commission ("California PUC") at 4-5; Joint Comments of the New York Department of Public Service, Connecticut Department of Public Utility Control, Illinois Commerce Commission and Maryland Public Service Commission (New York *et al.*") at 2-4; Joint Comments of the Maine Public Utilities Commission, Vermont Department of Public Service and Vermont Public Service Board ("Maine and Vermont") at 1-2; National Ass'n of State Utility Consumer Advocates ("NASUCA") at 3.

45/ *See, e.g.*, Bristol Bay Tel. Coop. *et. al* at 2-3; Iowa Telecom. Services, Inc. at 5; Montana Tel. Ass'n at 4-5; Nebraska Rural Telephone Coalition at 4; NTCA at 12-13; United States Telephone Ass'n/OPASTCO/National Rural Telephone Ass'n at 6-7.

46/ RTF Recommendation at 27 n.51.

neutral and therefore should be rejected. 47/ To the extent that any rural ILEC believes it is Constitutionally entitled to compensation for regulatory decisions that deny opportunities to achieve a reasonable return on investment – and all indications are that such cases should be few indeed, given the generous returns earned by most rural ILECs – any such carrier should be required to make an individual showing to that effect, 48/ and should be required to recover any such shortfall from its own end-user customers, *not* from other carriers or from universal service funds.

II. FUNDING LEVELS MUST NOT GROW EXCESSIVELY

The members of CUSC hope to provide supported universal service in areas currently served by rural telephone companies, but they also recognize that even once they begin receiving high-cost support, they are likely to remain net contributors to the universal service program. The CUSC members therefore bring a unique perspective to the debate over funding levels. On the one hand, CUSC has every interest in ensuring that funding is reasonably sufficient to preserve and advance universal service in high-cost areas. On the other hand, CUSC's core principles include ensuring that funds are efficiently targeted and avoiding unnecessary growth in funding levels. This interest coincides with the interests of

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47/ *Cf. Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253*, Memorandum Opinion & Order, File No. CWD 98-90, FCC 00-309, at ¶ 8 (rel. Aug. 28, 2000) (where the Commission expressed its concern about a universal service funding mechanism solely for incumbent local exchange carriers, explaining that such a fund would be a substantial barrier to entry).

consumers across the nation who ultimately pay the cost of high-cost support. This overall perspective on funding levels guides our comments below.

A. The Fund Should Grow by No More than the Amount Recommended by the RTF

The RTF's recommendations on funding levels were based on a delicate balance among competing policy priorities. Essentially, the RTF reached a political compromise among parties with very divergent interests. Certainly CUSC's members would have preferred a smaller fund or less growth in funding. 49/ Nonetheless, CUSC is willing to live with the result reached through the RTF process. Regrettably, however, many of the individual ILECs and ILEC industry associations evidently are not willing to live with that result.

Unrestricted growth in high-cost funding levels would place excessive burdens on the telecommunications consumers around the country who ultimately pay for this program, and could threaten the stability of the overall universal service regime. Therefore, the Commission and the Joint Board should firmly reject

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48/ *See FPC v. Hope Natural Gas*, 320 U.S. 591 (1944) (setting constitutional standard for "takings" in regulated industries); *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) (same).

49/ For example, CUSC appreciates the forthright and candid comments filed by DigitalLouisiana.org asserting that the old subsidy system results in universal service fees that are higher than necessary and that sweeping technological changes in the telecommunications industry necessitates a "complete rethinking" of connectivity issues in rural America. DigitalLouisiana.org at 1. *Accord* Maine and Vermont at 12 ("It is difficult to move away from any entrenched system of subsidy. ... The Telecommunications Act ... with its clear mandates to foster competition and ensure sufficiency of support for ALL rural and high cost areas, requires that we move, even if deliberately, away from systems that are inconsistent with those goals and towards uniform, targeted systems of support.") (emphasis in original) *Id.*

the ILECs' overreaching clamor for ever greater funds. The RTF recommends an equitable accommodation in making certain adjustments that would effectively result in a one-time approximately 15% increase in the amounts most rural telephone companies receive, but retaining a reasonable formula to constrain the total amount of future funding growth. 50/ Indeed, one could easily argue that a number of the RTF-recommended provisions that would increase the funding size, including the so-called "safety net additive" as well as the adjustment to the corporate operations expense limitation, are overly generous. 51/ The Commission should disregard the arguments of the numerous rural ILECs wishing to eliminate constraints on future fund growth. 52/

B. The FCC and the Joint Board Should Avoid Creating Artificial Incentives for Non-Rural ILECs to Sell Exchanges

Section 54.305 of the Commission's rules properly prevents the prospect of increased universal service funding from becoming an artificial incentive for non-rural ILECs to sell exchanges. CUSC does not object to the adoption of the RTF's proposed minor modifications to this rule as a "safety valve" funding mechanism, so long as any additional support is provided consistent with the principles

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50/ *Ex parte* letter from William R. Gillis, Chair, RTF, to Magalie Roman Salas, FCC, CC Docket No. 96-45, filed Nov. 10, 2000, attachment at 1.

51/ RTF Recommendation at 27-29; *see* California PUC at 4-5; New York *et al.* at 2-4; NASUCA at 3.

52/ Bristol Bay *et al.* at 2; Citizens Communications Co. at 2-3; Iowa Telecom. Services, Inc. at 3-5, 6, 9; Montana Telecom. Ass'n at 3; NTCA at 6; Oregon Exchange Carrier Ass'n at 1; Washington Independent Tel. Ass'n at 1;

enunciated by the RTF. 53/ The following RTF-recommended principles are most significant: (1) mere transfer of ownership should not result in increased support; (2) the potential availability of additional support should not artificially inflate the price of sale/transfer transactions; (3) additional support should be available only for post-transaction investment; and (4) the safety valve must be capped. 54/

But many of the rural ILECs disregard all these carefully constructed principles, and instead call for the elimination of Section 54.305. 55/ But contrary to the ILECs' arguments, eliminating this rule would do nothing to create an incentive for economically efficient investment in rural areas. Rather, eliminating Section 54.305 would create enormous uneconomic incentives for large, potentially more efficient carriers to sell exchanges to smaller, less efficient carriers, and would lead to substantial increases in the overall amount of universal service funding. The Commission must reject the ILECs' unsound argument.

C. High Cost Fund III Must be Explicit and Portable to Competitive ETCs, and Limited to Revenues Definitively Identified as Implicit Support

CUSC supports the RTF recommendation to establish a so-called "High Cost Fund III" ("HCF III") as a vehicle for eliminating implicit universal service support from rural ILECs' interstate access charges, and instead make all

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53/ RTF Recommendation at 29-30.

54/ *See id.*

55/ *See, e.g.*, Citizens at 4-5; Iowa Telecom. Services, Inc. at 3-5; NTCA at 17-18; Western Alliance at 11.

such support explicit and portable. 56/ As the Commission has recognized, converting implicit support to explicit, portable support is critically necessary in order to make all support available to ETCs in a competitively neutral manner. 57/ Thus, CUSC joins the RTF in calling upon the Commission to take the necessary steps to remove implicit support from rural ILECs' access charges and to establish HCF III as soon as is reasonably practicable.

CUSC agrees with most of the HCF III principles recommended by the RTF. In particular, CUSC agrees that HCF III support should be distributed to all ETCs – competitive entrants as well as ILECs – on a competitively neutral, per-line basis; that HCF III disbursements should be geographically deaveraged and targeted; and that HCF III should be funded through nondiscriminatory assessments on all interstate carriers. 58/

However, CUSC disagrees with the RTF's recommendation to establish HCF III based on "the difference between current interstate access revenues and the repriced interstate revenues" of rural ILECs. 59/ This approach, like the CALLS plan, makes the unfounded assumption that all residual access revenues not recovered through the rebalanced access charges constitute appropriate universal service subsidies. Instead, CUSC urges the Commission to establish an

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56/ RTF Recommendation at 37-38.

57/ *CALLS Order* at ¶¶ 190-94.

58/ RTF Recommendation at 31.

analytical framework to determine how much of those revenues properly should be treated as universal service support and made explicit. Revenues that the ILECs are currently receiving, but that cannot be justified as universal service support, either should remain in access charges, if justified, or should be treated as excess revenues and disallowed.

In addition, CUSC disagrees with the RTF's recommendation to leave HCF III "uncapped" and to adjust it annually based on rural ILECs' annual rate-of-return revenue requirement filings. 60/ In an increasingly competitive environment, no carrier should be entitled to a revenue guarantee, yet that is exactly what such a structure for HCF III would give rural ILECs. Moreover, leaving this new fund uncapped raises the risk that consumers could be exposed to unlimited increases in funding burdens. Rather, CUSC urges the Commission to establish a reasonable cap for HCF III, analogous to the $650 million cap adopted for the Interstate Access-Related Fund adopted in the CALLS Order. 61/ The Commission should keep in mind its sensible conclusion:

> Because increased federal support would result in increased contributions and could increase rates for some consumers, we are hesitant to mandate large increases in explicit federal support . . . in the absence of clear evidence that such increases are necessary either to preserve universal service, or to protect

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59/ *Id.* (recommended principle #3).

60/ *Id.* (recommended principles #3 and #7).

61/ *CALLS Order* at ¶ 201.

affordable and reasonably comparable rates, consistent with the development of competition. 62/

D. The Record is Not Sufficient to Determine Whether and How Much to Increase Funding for Deployment of Advanced or Information Services

CUSC does not necessarily disagree with the RTF's very general recommendation favoring a "support mechanism that inherently provides incentives for the infrastructure investments necessary for providing access to advanced services." 63/ But the RTF's only specific suggestion for how to implement this general recommendation (as well as the related recommendation on access to information services) 64/ is a single sentence to the effect that "[t]he indexed cap should be resized whenever the definition of supported services is changed." 65/ With all due respect, CUSC submits that this does not provide a sufficient record basis for the FCC or the Joint Board to make any specific changes to the methodology for computing high-cost support.

Accordingly, CUSC agrees with the parties who argue that no such changes should be implemented at this time. 66/ CUSC agrees with the Public Utilities Commissions of California, New York, Connecticut, Illinois, and Maryland

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62/ *Seventh Report & Order*, 14 FCC Rcd at 8111, ¶ 69.

63/ RTF Recommendation at 22.

64/ *Id.* at 23.

65/ *Id.* at 27.

66/ *See, e.g.*, WorldCom at 5-6; Sprint at 2.

that the RTF has "put the cart before the horse" and based its sweeping recommendation on a paucity of facts. 67/ In light of this, CUSC recommends that the Commission exercise prudence by declining to make any changes in funding levels to support deployment of advanced or information services.

III. CONCLUSION

For the reasons stated above, the Competitive Universal Service Coalition urges the Commission, as it deliberates the merits of the Rural Task Force recommendation, to: (1) ensure that competitive neutrality and funding portability continue to be guiding principles for universal service reform; (2) reject certain parties' arguments to implement the RTF proposal in ways that might create new impediments to competitive entry; and (3) establish a high-cost universal service fund that is explicit, moderately sized and targeted to those with the greatest need.

67/ Comments of the California Public Utilities Commission ("California PUC") at 4-5. The California PUC correctly asserts that the RTF makes no effort to establish that current support levels are insufficient to justify its recommendations for increased support and has not made an evidentiary showing justifying the need for increased support. *Id.* *Accord* Joint Comments of the New York Department of Public Service, Connecticut Department of Public Utility Control, Illinois Commerce Commission and Maryland Public Service Commission at 5.

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CERTIFICATE OF SERVICE

I, Cecelia Burnett, do hereby certify that on this 26th day of February, 2001, copies of the foregoing "Competitive Universal Service Coalition Further Comments on the Rural Task Force Recommendation" were delivered by first class mail, unless otherwise indicated, to the following parties:

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